

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
a Washington Corporation,

Plaintiff,

v.

AMISH P. SHAH, an individual, JOSE A.
RIVERA, a/k/a JAY STYLES, an
individual, DIGISPACE SOLUTIONS
LLC, a California Limited Liability
Company, YMULTIMEDIA LLC, a
California Limited Liability Company, and
DOES 1-50,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

Plaintiff Microsoft Corporation (“Microsoft”) brings this action against DEFENDANTS AMISH P. SHAH, JOSE A. RIVERA a/k/a JAY STYLES, DIGISPACE SOLUTIONS LLC, YMULTIMEDIA LLC (hereinafter, the “Named Defendants”), and DOES 1-50 (each a “Defendant” and collectively, “Defendants”), and alleges as follows:

I. JURISDICTION AND VENUE

1. This is a complaint for an injunction, damages and other appropriate relief to stop Defendants from violating Microsoft’s trademark and service mark rights by registering one or more Internet domain names that are identical or confusingly similar to Microsoft’s trademarks and service marks, and by using such domain name(s) in bad faith to profit from Microsoft’s

COMPLAINT FOR DAMAGES AND
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marks. In this action, Microsoft alleges: (1) Violations of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d); (2) Trademark Infringement, 15 U.S.C. § 1114; (3) False Designation of Origin, 15 U.S.C. § 1125(a); (4) Trademark Dilution, 15 U.S.C. § 1125(c); (5) Unfair Business Practices, RCW § 19.86 *et seq.*; (6) Unfair Competition under Washington common law; and (7) Unjust Enrichment under Washington common law.

2. This Court has subject matter jurisdiction over Microsoft's claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

3. This Court has personal jurisdiction over Defendants, who have engaged in business activities in and directed to this district and have committed a tortious act within this district.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Microsoft's claims occurred in this judicial district.

II. THE PARTIES

5. Plaintiff Microsoft is a Washington corporation with its principal place of business in Redmond, WA.

6. On information and belief, Defendant Amish P. Shah is an individual residing at 12 McMartin Ct 7N, Jersey City, NJ 07305 and/or 2323 Broadway Ste 202, San Diego, California 92102. On further information and belief, Defendant Amish P. Shah registered, uses, owns or co-owns one or more Infringing Domain Names (*see infra*, Paragraph 25) and/or otherwise infringed one or more Microsoft trademarks or service marks, jointly and/or severally, and directly, contributorily, and/or vicariously.

7. On information and belief, Defendant Jose A. Rivera, also known as Jay Styles, is an individual residing at 1049 Laguna Seca Loop, Chula Vista, California 91915. On further information and belief, Defendant Jose A. Rivera registered, uses, owns or co-owns one or more Infringing Domain Names and/or otherwise infringed one or more Microsoft trademarks or service marks, jointly and/or severally, and directly, contributorily, and/or vicariously.

8. On information and belief, Defendant Digispace Solutions LLC is a limited liability company organized under the laws of California, with a principal place of business at

1 1080 Park Blvd Suite 1805, San Diego, California 92101, and for whom Amish Shah serves as
 2 founder and Chief Executive Officer. On further information and belief, Defendant Digispace
 3 Solutions LLC registered, uses, owns or co-owns one or more Infringing Domain Names and/or
 4 otherwise infringed one or more Microsoft trademarks or service marks, jointly and/or severally,
 5 and directly, contributorily, and/or vicariously.

6 9. On information and belief, Defendant yMultimedia LLC is a limited liability
 7 company organized under the laws of California, with a principal place of business at
 8 1041 Market Street #191, San Diego, California 92101. On further information and belief,
 9 Defendant yMultimedia LLC was founded by Amish Shah and Jose Rivera as a division of
 10 Defendant Digispace Solutions LLC. On further information and belief, Defendant
 11 yMultimedia LLC registered, uses, owns or co-owns one or more Infringing Domain Names
 12 and/or otherwise infringed one or more Microsoft trademarks or service marks, jointly and/or
 13 severally, and directly, contributorily, and/or vicariously.

14 10. Microsoft is unaware of the true names and capacities of the Defendants sued
 15 herein as Does 1 through 50, but alleges on information and belief that each of them is in some
 16 way responsible for the wrongs alleged herein. Microsoft will amend this complaint to plead
 17 their true names and capacities when ascertained.

18 11. Microsoft is informed and believes, and thereupon alleges, that each of the
 19 Defendants is, and at all times mentioned herein was, the agent of each of the other Defendants
 20 in that at all time herein mentioned each of the Defendants was authorized and empowered by
 21 each of the other Defendants to act, and did act, as the principal or agent of each of the other
 22 Defendants. Microsoft further alleges that each and every allegation regarding Defendants
 23 contained herein was done by each Defendant in the course and scope of said agency and in the
 24 capacity of and as principal or agent for, each of the other Defendants and with the permission
 25 and consent of each co-Defendant.

26 **III. MICROSOFT'S BUSINESS AND TRADEMARKS**

27 12. Microsoft is a world leader in the development of software and related products
 28 for a wide variety of personal, business, government, and academic uses. Microsoft offers a

broad range of products and services, including, but not limited to, computer software such as the Microsoft Windows operating system and Microsoft Office and Internet and electronic mail services such as MSN and Windows Live services, to name a few. Microsoft's software products include instant messenger programs such as MSN Messenger, Windows Live Messenger, and Windows Messenger.

13. Microsoft owns registrations for a number of trademarks and service marks that it uses to identify its products and services in the marketplace. Among the marks owned by Microsoft are the following registered marks (collectively the "Microsoft Marks"): MSN® and WINDOWS®. Microsoft has spent millions of dollars promoting the goods and services under the Microsoft Marks, and millions of people are using the goods and services associated with those marks.

14. Since at least March 7, 1995, Microsoft has used in commerce the trademark and service mark MSN® to promote computer hardware and software products as well as for a broad array of on-line information and electronic communication services.

15. Microsoft owns the following United States Trademark Registrations for its MSN mark in connection with the following goods and services, which as listed below reflect any updates made through statutory maintenance filings:

Reg. No.	Reg. Date	Goods and Services
2,153,763	4/28/1998	Computer programs for transmitting and receiving electronic mail, text graphics, audio, video and other data from a remote computer network and for accessing global communications networks; computer programs for accessing interactive games and on-line shopping services; computer programs for accessing information in a wide variety of fields including news, entertainment, music, travel, investments, sports, computers, parenting, and general reference information.
2,191,997	9/29/1998	Providing information concerning travel and travel-related subjects over computer networks and global communication networks; providing information concerning motor vehicles over computer networks and global communication networks.

Reg. No. Reg. Date Goods and Services

2,191,998	9/29/1998	Providing information in the fields of investment and finance over computer networks and global communication networks.
2,201,105	11/3/1998	Providing information in a wide variety of non-music related fields over computer networks and global communication networks; providing general reference information over computer networks and global communication networks; providing information concerning parenting and children's health, nutrition, and well being over computer networks and global communication networks; providing information concerning computers and computer software over computer networks and global communication networks; providing access to computer data bases and web sites of others in various fields by means of a global communications network; providing bulletin board services and chat services by means of global communication networks; electronic mail services.
2,342,096	4/18/2000	Computerized on-line retail services in the field of general merchandise such as books, clothing, cars, computers, software, gifts, groceries and food, toys, music, electronics, and games; providing retail shopping information, including retailer guides, gift finders and gift reminders, via a global communication network; promoting the on-line retail shopping services of others through advertising.
2,352,114	5/23/2000	Providing interactive on-line computer games over computer networks and global communication networks.
2,418,517	1/9/2001	Providing information in the fields of movies and sports via a global computer network.
2,498,608	10/16/2001	Shirts, vests, sweatshirts, shorts, jackets, caps, coats.
2,565,513	4/30/2002	Toys, namely, plush toys, soft sculptured toys.
2,600,020	7/30/2002	[Multiple services in international classes 35, 36, 38, 39, 41, and 42. See Exhibit 1 for detailed list.]
2,608,310	8/13/2002	Computer hardware and peripherals, namely, interface devices for accessing global computer networks; computer operating system software for real-time video games; computer software programs for accessing global computer networks; computer software programs for electronic on-line browsing; computer graphical utilities programs; computer software programs for video image compression and decompression; computer software programs for word text editing; and computer software programs for text management.

Reg. No. Reg. Date Goods and Services

2,751,320	8/12/2003	Informational flyers, pamphlets, instructional manuals, user guides and reference guides, all in the field of television and global communication network entertainment and access and equipment therefor.
2,792,781	12/9/2003	Computer communication services offered to television viewers, namely, providing multiple-user access to a global computer information network; electronic mail services; web messaging; providing chat rooms for the transmission of messages among internet users concerning topics of general interest, television programming and related topics, entertainment, sports and news; electronic on-line services providing a communications link to global interactive networks for the transfer and transmission of messages, documents, images, music, games and data.

See Exhibit 1. Each of the above-listed registrations for the MSN mark is valid, subsisting, and incontestable under 15 U.S.C. § 1065.

16. The MSN mark is a famous mark, broadly recognized as a brand identifier for Microsoft's various goods and services provided under that mark.

17. Since at least October 18, 1983, Microsoft has used in commerce the trademark and service mark WINDOWS® to promote its market-leading computer operating software as well as a variety of computer services.

18. Since January 10, 1995, Microsoft's WINDOWS trademark has been registered in the United States Patent and Trademark Office, Registration No. 1,872,264, for computer programs and manuals sold as a unit, namely, graphical operating environment programs for microcomputers. *See Exhibit 2.* This registration is valid, subsisting, and incontestable under 15 U.S.C. § 1065.

19. Microsoft also owns the following United States Trademark Registrations for its WINDOWS mark:

Reg. No. Reg. Date Goods and Services

1,989,386	7/30/1996	Sound system for personal computers comprising [circuit board, microphone,] [headphones,] computer programs for recording and generating sounds [for use therewith] [and manuals therefor sold as
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Reg. No. Reg. Date Goods and Services

		a unit].
2,005,901	10/8/1996	Publications, namely user manuals, instruction guides, reference guides, newsletters, magazines, books about computer programs.
2,212,784	12/22/1998	Arranging and conducting trade shows featuring computers, computer software and computer software related products.
2,463,509	6/26/2001	Mail order and on-line distributorship services featuring computer software and publications on computer hardware and software; on-line retail services featuring computer hardware, software and publications on computer hardware and software; licensing of computer software; arranging and conducting trade shows featuring computers, computer software and computer software related products.
2,463,510	6/26/2001	Computer services, namely providing technical support, information and consultation services in the fields of computer hardware, computer software and computer operating systems, all offered via computer networks and global communications networks; computer hardware and software testing services; computer services, namely providing software updates via computer networks and global communication networks; computer services, namely providing an on-line magazine in the field of computers and computer software; internet search engines services; providing online research services for others in various fields; licensing of intellectual property.
2,463,526	6/26/2001	Providing information over computer networks and global communication networks in the fields of entertainment, music, and interactive games; education services, namely on-line tutorials in the field of computers and computer software.
2,559,402	4/9/2002	Computer game programs; [electronic game equipment, namely, joysticks, electronic game equipment containing memory devices, namely computer discs for communication with televisions and computers for playing electronic games;] computer operating software for use in playing computer games.
2,565,965	4/30/2002	Computer programs for use in automobiles, namely, computer programs for monitoring automobile performance, for mapping and navigation, for electronic mail and wireless communications, for maintaining personal directories, contact lists, address and telephone number lists; operating system programs and utilities; computer programs for wallet-sized personal computers, namely, personal information manager programs with calendars, contact information

Reg. No.	Reg. Date	Goods and Services
		files and to do lists; programs for facilitating voice, text and pen input; access programs for global communication networks; computer programs for accessing global communication networks and displaying content therefrom; and computer programs for use with hand-held computers, namely, operating system and utility programs; a full line of business application programs for use with hand-held computers.

See Exhibit 2. Each of these registrations is valid, subsisting, and incontestable under 15 U.S.C. § 1065.

20. The WINDOWS mark is a famous mark, broadly recognized as a brand identifier for Microsoft's computer software.

21. The Microsoft Marks, as well as others owned by Microsoft, are used in interstate commerce by Microsoft in connection with the sale, offering for sale, distribution, and advertising of Microsoft's products and services. The Microsoft Marks are distinctive and famous and were distinctive and famous at the time of all acts alleged herein. As a result of Microsoft's enormous investment in developing world-class products and services and promoting those products and services under the Microsoft Marks, the Microsoft Marks have developed extensive goodwill in the market. Accordingly, the Microsoft Marks are extremely valuable and important to Microsoft.

IV. MICROSOFT'S INTERNET PRESENCE

22. Microsoft also maintains a substantial presence on the Internet. Via the Internet, Microsoft advertises its products and services, transacts business with its customers, offers its customers access to many of its services, and provides product support, among other things.

23. In order to provide its customers with easy access to its online products and services, Microsoft has registered a number of Internet domain names. Many of these domain names correspond to Microsoft's trademarks and service marks. Examples of such domain names are <microsoft.com> and <msn.com>.

24. Each of these domain names, as well as others registered to Microsoft, resolves to a Microsoft-created website that provides Microsoft's customers with information related to Microsoft's products and services. These websites generate business and goodwill for Microsoft and allow Microsoft to develop and maintain relationships with its customers.

V. DEFENDANTS' UNLAWFUL ACTIONS

25. On information and belief, Defendants are or have been the registrants, users, or owners of Internet domain names that contain or consist of Microsoft's marks or misspellings of those marks (the "Infringing Domain Names"), including but not limited to, <download-msnmessenger.com> and/or <msnmessenger-downloadnow.com>. The Infringing Domain Names incorporate and are confusingly similar to Microsoft's marks. The Infringing Domain Names do not resolve to websites owned or endorsed by Microsoft. Rather, they resolve or at one time resolved to websites registered and controlled by one or more Defendants (the "Infringing Websites").

26. The Infringing Domain names are likely to lead consumers to mistakenly believe that the websites reached through those domain names are affiliated with or sponsored or approved by Microsoft. Defendants' websites have exploited this confusion by conspicuously displaying Microsoft's MSN trademark.

27. The Infringing Websites include or at one time included advertisements for emoticon related products. The domain name and the Microsoft trademarks on the Infringing Websites are further likely to cause consumers to mistakenly believe that the emoticon-related products are affiliated with or sponsored or approved by Microsoft. Indeed, some of the websites brazenly claim that these products are a "bonus feature" of Microsoft's messenger products.

28. The Infringing Websites prominently offer visitors a link to "download" MSN Messenger. But the "download" links do not start a download of the MSN Messenger software. Instead, the visitor is automatically redirected to one or more other websites controlled by Defendants and/or Smiley Central where that user is solicited to download and install emoticon products which are not affiliated with, sponsored by, or approved by Microsoft in any way. A

1 printout of <smileycentral.com> is attached as Exhibit 3.

2 29. Consumers are likely to download the Smiley Central toolbar and emoticons
3 because they mistakenly believe that they are downloading a product produced by or authorized
4 by Microsoft. These consumers are diverted from the Microsoft website or software they are
5 seeking and Microsoft accordingly loses an opportunity to interact with them.

6 30. On information and belief, Defendants use the Infringing Domain Name to profit
7 in bad faith from the Microsoft Marks by using the marks to drive traffic to their websites.

8 31. On information and belief, Defendants registered, control, use, or own the
9 Infringing Domain Names. On further information and belief, Defendants receive a payment
10 each time a website visitor clicks on one of the advertisements or hyperlinks that appears on that
11 website and/or downloads or installs a product such as the Smiley Central toolbar.

12 32. Defendants are not affiliated with, or sponsored or approved by, Microsoft and
13 have not been authorized by Plaintiff to use the Microsoft Marks. Defendants have not now or
14 ever been authorized by Plaintiff to use or register any name or mark that includes the Microsoft
15 Marks.

16 33. Defendants' registration, trafficking, and/or use of the Infringing Domain Names
17 is primarily to capitalize on the goodwill associated with the Microsoft Marks.

18 34. In addition to registering and using their own Infringing Domain Names, the
19 Named Defendants have actively and intentionally induced others ("Induced Persons") to profit
20 in bad faith from and to capitalize on the goodwill associated with the Microsoft Marks by
21 following a similar methodology of registering and using numerous other domain names that
22 contain or consist of Microsoft's marks. Defendants even showed or otherwise provided Induced
23 Persons a model or example of deceptive website content likely to cause consumers to
24 mistakenly believe that the emoticon-related products are part of Microsoft's messenger
25 programs or otherwise affiliated with or sponsored or approved by Microsoft.

26 35. On information and belief, the Named Defendants communicated with tens of
27 thousands of persons to whom they provided information via Defendants' own website showing
28 how Microsoft marks could be misleadingly used both in domain names and on websites to

1 deceive consumers into thinking they could or were downloading MSN Messenger when in fact
2 they would be directed to download the Smiley Toolbar. But Defendants went even further than
3 providing instruction by suggesting content for how to misleadingly use Microsoft marks.
4 Defendants also provided a ready method for Induced Persons to implement such a scheme.
5 Defendants' provided a link on their website to Neverblue, an internet company through which
6 Induced Persons could direct confused consumers to the Smiley Toolbar and then be paid
7 through Neverblue for doing so. On information and belief, Defendants were paid by Neverblue
8 for each person who Defendants referred to and who signed up and did business with Neverblue.

9 36. On information and belief, Defendants also sold an internet advertising product
10 called the Magic Bullet System that incorporated specific software that would enable persons to
11 easily create landing pages on their own websites that incorporated Microsoft marks. Indeed, in
12 promoting their Magic Bullet System, Defendants produced a video specifically showing how
13 the Magic Bullet System could be used to set up a marketing campaign using Microsoft marks to
14 sell the Smiley emoticons.

15 37. In that video, the Named Defendants' "Messenger Update" campaign was
16 described as one that "looks like I'm promoting something related to Messenger." The video
17 then showed a landing page at <download-msnmessenger.com> titled "Download MSN
18 Messenger" and "100% Free Download" and contained content "all about MSN Messenger."
19 Users were then instructed to create several tabs, such as "About MSN Messenger," with "a pitch
20 on every one." According to the video, one or more pages within the <download-
21 msnmessenger.com> website, such as the page that appeared when a visitor clicks on the "About
22 MSN Messenger" tab, should have "a big download button [that] says Download MSN
23 Messenger." Placing a large download button at the of the page is important because visitors'
24 "first instinct is to click this button." When the button is clicked, visitors are directed to Smiley
25 Central and Defendants are paid \$3.50 per download of the toolbar.

26 38. Another video instructed users on how to create campaigns with the Magic Bullet
27 software. This process included entering a site url such as <msnmessenger-downloadnow.com>,
28 selecting ad-words, and using the blog and landing page builder to create a landing page. The

1 Named Defendants also instructed users to include a blog title, such as “Download MSN
2 Messenger,” and a description, such as “100% Free MSN and Smiley Downloads.” Because
3 users created landing pages using the Magic Bullet software’s provided content and pre-defined
4 templates or by otherwise copying from Named Defendants’ Infringing Websites, the resulting
5 websites were and are similar in appearance to the Named Defendants’ Infringing Website(s),
6 and also infringe Microsoft’s marks. Indeed, the Magic Bullet software includes “the same exact
7 theme that we used for the Smiley campaign.”

8 39. On further information and belief, Defendants received \$3,000 from each
9 purchaser of the Magic Bullet system. On further information and belief, Named Defendants
10 generated over \$5 Million in revenue in 2009 following their methodology incorporated into
11 their Magic Bullet system.

12 40. On information and belief, Defendants Digispace Solutions and yMultimedia
13 market technologies such as Revenue Logic and Magic Bullet, which allow users to “leverage
14 [their] campaigns against competitors, increase [their] reach and conversions across different
15 verticals, and maximize both [their] sales stream and revenue.”

16 41. On information and belief, the Named Defendants intentionally induced others to
17 unlawfully use Microsoft’s marks in domain names and in an infringing or diluting manner on
18 websites. Based on information and belief, a large number of infringing and diluting domains
19 and websites were created as a result of the Named Defendants’ encouragement, including but
20 not necessarily limited to the following:

21		
22	download-free-msn-messenger.com	msn-download-messenger.com
23	downloadlivemsnmessenger.com	msn-download-messengertoday.com
24	downloadmsnlivemessenger.com	msn-freedownloads.com
25	download-msn-live-messenger.com	msn-livemessenger.com
26	download-msnmessenger.com	msn-live-messenger-download.com
27	downloadmsn-messenger.com	msn-messenger.com
28		

1	download-msn-messenger.info	msnmessenger-2010.com
2	downloadmsnmessenger.net	msnmessenger9.info
3	download-msnmessenger.net	msnmessengerdl.com
4	downloadmsn-messenger.net	msnmessengerdownload.biz
5	download-msn-messenger.net	msn-messengerdownload.com
6	downloadmsnmessenger.org	msnmessenger-download.net
7	download-msnmessenger.tk	msnmessengerdownload.org
8	download-msn-messenger-for-free.com	msnmessenger-downloader.com
9	downloadmsnmessengerfree.com	msnmessenger-downloadfree.com
10	download-msnmessenger-free.com	msn-messenger-downloadfree.com
11	download-msnmessenger-msn.com	msnmessenger-downloadnow.com
12	download-msnmessenger-now.com	msnmessengerdownloads.com
13	download-msn-messenger-now.com	msnmessengerdownloads.com
14	download-msnmessengerr.com	msnmessenger-downloads.com
15	downloadwindowsmessenger.com	msn-messenger-downloads.net
16	downloadwindowsmessengerfree.com	msnmessenger-free.com
17	downloan-msn-messenger.com	msn-messenger-free.com
18	easy-download-msn-messenger.com	msnmessengerfreedownload.com
19	freedownloadmsnmessenger.net	msnmessenger-freedownload.com
20	freedownloadmsnmessenger85.com	msn-messenger-free-download.com
21	freemsnmessengerdownload.com	msnmessengerinstall.com
22	free-msnmessenger-download.com	msnmessengers-download.com
23	get-free-msn-messenger.com	msnwebmessenger.org
24	getmsnmessenger.com	msn-windowsmessenger.com
25	get-msn-messenger.net	msn-windows-messenger.com
26		
27		
28		

installmsn-messenger.com	officialmsnmessenger.com
messengerdownload-msn.com	windowoslivemessengerfree.com
msndownloadmessenger.com	

FIRST CLAIM FOR RELIEF
**(Cybersquatting and Contributory Cybersquatting under the Anti-Cybersquatting
Consumer Protection Act –15 U.S.C. § 1125(d))**

42. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 41 above.

43. The Microsoft Marks were distinctive at the time Defendants registered the Infringing Domain Names and Induced Persons registered their infringing domain names and remain distinctive today.

44. The Microsoft Marks were famous at the time Defendants registered the Infringing Domain Names and Induced Persons registered their infringing domain names and remain famous today.

45. Defendants' Infringing Domain Names and the domain names registered by Induced Persons are identical or confusingly similar to or dilutive of the Microsoft Marks at the time Defendants registered their Infringing Domain Names and Induced Persons registered their domain names, and remain so today.

46. Defendants have registered, trafficked in, and/or used the Infringing Domain Names with bad faith intent to profit from the Microsoft Marks, and induced the Induced Persons to register and use infringing domain names with the knowledge the Induced Persons would profit in bad faith from their use of the Microsoft Marks.

47. As a result of their wrongful conduct, Defendants are liable to Microsoft for violations of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

SECOND CLAIM FOR RELIEF

(Trademark and Contributory Trademark Infringement Under the Lanham Act – 15 U.S.C. § 1114)

48. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 47 above.

49. Defendants have used and intentionally induced others to use the Microsoft Marks in interstate commerce.

50. Defendants' use of the Microsoft Marks and intentional inducement of others to use the Microsoft Marks is likely to cause confusion, or to cause mistake, or to deceive.

51. Defendants' wrongful and unauthorized use and inducement of others' wrongful and unauthorized use of the Microsoft Marks and counterfeits of the Microsoft Marks to promote, market, or sell products and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114 *et seq.*

THIRD CLAIM FOR RELIEF

(False Designation and Contributory False Designation of Origin Under the Lanham Act – 15 U.S.C. § 1125(a))

52. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 51 above.

53. Defendants' and Induced Persons' use of the Microsoft Marks in connection with goods or services in commerce are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants or Induced Persons with Microsoft, or as to the origin, sponsorship, or approval of Defendants' or Induced Persons' goods, services, or commercial activities with Microsoft.

54. As a result of their wrongful conduct, Defendants are liable to Microsoft for violation of 15 U.S.C. § 1125(a).

FOURTH CLAIM FOR RELIEF
(Dilution and Contributory Dilution Under the Lanham Act – 15 U.S.C. § 1125(c))

55. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 54 above.

56. Defendants' or Induced Persons' use of one or more of the Microsoft Marks in commerce commenced after such marks became famous within the meaning of 15 U.S.C. § 1125(c).

57. Defendants' or Induced Person's use of the Microsoft Marks in commerce is likely to cause dilution by blurring or dilution by tarnishment of the Microsoft Marks.

58. Upon information and belief, Defendants willfully intended to trade on the recognition of the Microsoft Marks and to have Induced Persons trade on the recognition of the Microsoft Marks.

59. As a result of their wrongful conduct, Defendants are liable to Microsoft for violation of 15 U.S.C. § 1125(c).

FIFTH CLAIM FOR RELIEF
(Unfair Business Practices - RCW § 19.86 *et seq.*)

60. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 59 above.

61. Defendants' use of the Microsoft Marks to promote, market, or sell products and services constitutes an unfair business practice pursuant to RCW § 19.86 *et seq.* Defendants' use of the Microsoft Marks is an unfair or deceptive practice occurring in trade or commerce that impacts the public interest and has caused injury to Microsoft.

62. Defendants' actions violate RCW Ch. 19.86 *et seq.*

SIXTH CLAIM FOR RELIEF
(Washington Common Law Unfair Competition)

63. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 62 above.

64. Defendants' use of the Microsoft Marks has infringed on their distinctive features in a manner that tends to confuse, in the public mind, Microsoft's products and/or advertising with the products and/or advertising of others.

65. The acts of Defendants complained of herein constitute unfair competition in violation of Washington common law.

SEVENTH CLAIM FOR RELIEF
(Washington Common Law Unjust Enrichment)

66. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 65 above.

67. The acts of Defendants complained of herein constitute unjust enrichment of Defendants at Microsoft's expense in violation of Washington common law.

VI. PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully requests that the Court enter judgment against Defendants as follows:

1. That the Court issue temporary and permanent injunctive relief against Defendants, and that Defendants, their officers, agents, representatives, servants, employees, attorneys, successors and assignees, and all others in active concert or participation with Defendants, be enjoined and restrained from:

- a) infringing Microsoft's trademarks and service marks;
- b) using Microsoft's trade names, trademarks, or service marks, or any version thereof, in connection with the description, marketing, promotion, advertising, or sale of products or services not associated with or approved by Microsoft;
- c) registering, using, or trafficking any domain names that are identical or confusingly similar to Microsoft's marks, including but not limited to domain names containing Microsoft's marks and domain names containing misspellings of Microsoft's marks; and

d) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a) through c) above.

2. That the Court order the forfeiture or cancellation of the Infringing Domain Name or the transfer of the Infringing Domain Name to Microsoft;

3. That the Court award Microsoft all damages caused by Defendants' unlawful acts;

4. That the Court award Microsoft treble damages as provided by law;

5. That the Court award Microsoft all gains, profits, and advantages derived by Defendants from their unlawful acts;

6. That the Court award Microsoft treble the gains, profits, and advantages derived by Defendants from their unlawful acts;

7. That the Court award Microsoft statutory damages of \$100,000 for each of Defendants' Infringing Domain Names and each of Induced Persons' infringing domain names;

8. That the Court award Microsoft its attorneys' fees and costs incurred herein, including prejudgment and post-judgment interest; and

9. That the Court grant Microsoft all other relief to which it is entitled and such other or additional relief as is just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Microsoft hereby demands a trial by jury in this action.

DATED April 15, 2010

Respectfully submitted,
Orrick, Herrington & Sutcliffe LLP

By: s/ Mark S. Parris

Mark Parris (Bar No. 13870)
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Attorneys for Plaintiff
MICROSOFT CORPORATION

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